

1 business records exceptions. So they are being offered as
2 well for the truth of the matter stated in the documents.

3 JUDGE CHACHKIN: When you say the truth, you're not
4 saying this is what RAM's told NABER?

5 MR. HARDMAN: That's right.

6 JUDGE CHACHKIN: They're not being offered that what
7 RAM told NABER is true or not?

8 MR. HARDMAN: No, I'm not, Your Honor.

9 JUDGE CHACHKIN: Well, that's what I wanted to make
10 clear. These are --

11 MR. HARDMAN: Okay.

12 JUDGE CHACHKIN: It's not being offered for the
13 truth. It's being offered -- these are the documents. This
14 is what NABER did in accordance with its responsibilities to
15 determine whether there are opposition to Capitol getting a
16 grant and this the correspondence with RAM and others as to
17 their views on the matter.

18 MR. JOYCE: Your Honor, I respectfully submit that
19 he's going to have to go through each one of these --

20 JUDGE CHACHKIN: For what purpose.

21 MR. JOYCE: -- these items, to establish that
22 they're not hearsay. Some of these are, are letters --

23 JUDGE CHACHKIN: I just told you they're not being
24 offered for the truth. They're being offered to show what
25 took place, not that these documents are true, but this was

1 filed with NABER. This establishes a state of mind, both of
2 Capitol and of RAM at the time that Capitol sought to have a
3 frequency.

4 MR. JOYCE: But it would be improper to draw an
5 inference --

6 JUDGE CHACHKIN: From what?

7 MR. JOYCE: -- that NABER -- if he has excluded
8 certain documents.

9 JUDGE CHACHKIN: Well, what documents has he
10 excluded?

11 MR. JOYCE: I don't know because I don't have all of
12 them, Your Honor. Mr. Hardman has put this together.

13 JUDGE CHACHKIN: Who says there are other documents?

14 MR. JOYCE: Mr. Vasek's declaration does not say
15 these are all of the communications that were in the files.

16 JUDGE CHACHKIN: It says, "which were sent or
17 received by NABER in the ordinary course of business in
18 connection with or related to the coordination of Capitol's
19 application."

20 MR. JOYCE: It does not say that there were not
21 others, Your Honor.

22 JUDGE CHACHKIN: It's saying this is what he
23 received, sent or were received. It specifically says it.

24 MR. HARDMAN: Your Honor, just so there's no, no
25 confusion, the declaration does not purport to say that these

1 are all the documents in the files. They're certainly the
2 relevant documents and if RAM had any problem with this being
3 -- or the Government with this being a complete or fair
4 representation of the files, they certainly had every
5 opportunity to notice the -- notice Mr. Vasek for cross-
6 examination. They can go look in NABER's files themselves.
7 If they have something they want to produce --

8 JUDGE CHACHKIN: That's fair enough. If you go into
9 NABER's -- you feel there's other relevant documents which
10 were excluded, I certainly permit you to reopen the record for
11 that purpose, to put it in.

12 MR. JOYCE: I simply want the record to clearly
13 show, Your Honor, that these are not all the documents upon
14 which NABER relied in making its coordination decision.

15 JUDGE CHACHKIN: Well, it says what it says. It
16 says this is the documents which were sent to or received by
17 NABER in the ordinary course of business in connection with or
18 related to the coordination of Capitol's application, so this
19 is Mr. Vasek's view of all the documents which are relevant.

20 MR. JOYCE: No. Mr. Hardman's telling us that's not
21 the case. Mr. Hardman is saying that these are relevant, not
22 that Mr. Vasek said these are relevant.

23 JUDGE CHACHKIN: This is Mr. Vasek's declaration.

24 MR. JOYCE: It does not say anywhere that I, Donald
25 Vasek, determined that the following documents were the only

1 relevant documents used in our coordination of this
2 application and it's a critical point, Your Honor.

3 JUDGE CHACHKIN: Well, I told you if you can find
4 other documents which you feel are relevant, put it in. I'll
5 let you. Apparently Mr. Hardman has no objection. Do you
6 have any objection?

7 MR. HARDMAN: No.

8 MR. JOYCE: I have no objection to these documents
9 going in. I will probably use them on cross-examination. I
10 do object to Mr. Hardman saying that these are the only
11 relevant documents used by NABER in making its coordination
12 decision.

13 JUDGE CHACHKIN: If you have other relevant
14 documents, submit it.

15 MR. JOYCE: I probably will, Your Honor.

16 JUDGE CHACHKIN: Well, when you do, fine. Right now
17 these are the only documents according to Mr. Vasek which were
18 -- according to him, which are in connection with or related
19 to the coordination of Capitol's application. I don't know of
20 any other documents. If you do, put them in. I'm going to
21 receive -- Capitol Exhibit 18 will be received.

22 (The document previously marked for
23 identification as CAP Exhibit No. 18
24 was received into evidence.)

25 MR. HARDMAN: Thank you, Your Honor.

1 JUDGE CHACHKIN: Do you have your next witness?

2 MR. HARDMAN: Yes, Your Honor. At this point
3 Capitol would call Mr. J. Michael Raymond to the stand. Mr.
4 Raymond?
5 Whereupon,

6 JAMES MICHAEL RAYMOND
7 was called as a witness and, after having first been duly
8 sworn, was examined and testified as follows:

9 JUDGE CHACHKIN: Please be seated. State your name
10 and address for the record, please.

11 MR. RAYMOND: My name is James Michael Raymond. I
12 reside at 290 Kenna Drive, South Charleston, West Virginia
13 25309.

14 DIRECT EXAMINATION

15 BY MR. HARDMAN:

16 Q Mr. Raymond, would you open the document with the,
17 the white cover in front of you to -- behind Tab 1 to a
18 document with the notation in the upper right-hand corner
19 Exhibit CAP 01? Do you have that, sir?

20 A Yes, sir.

21 Q And would you quickly review the next 30 pages of
22 that document and tell us if that is your prepared direct
23 testimony in this proceeding?

24 A Yes, sir, it is.

25 Q And do you have any additions or corrections to that

1 testimony?

2 A No, sir, I do not.

3 MR. HARDMAN: At this time, Your Honor, I would like
4 to move the admission of Exhibits 1 through -- I believe he --
5 as part of his statement he covers through Exhibit 17, you
6 know, as subsidiary exhibits, but before I pass the witness I
7 have a few questions on further direct.

8 MR. JOYCE: Your Honor, I don't understand how he
9 can move his direct testimony prior to opportunity for cross-
10 examination. I also don't understand if this is going to be
11 cumulative in addition to oral direct testimony here or not.

12 JUDGE CHACHKIN: Well, I don't know what he's going
13 to ask him, so let's wait and hear.

14 MR. JOYCE: But --

15 JUDGE CHACHKIN: Do you object to the receipt of
16 Exhibit 1?

17 MR. JOYCE: At this time I do, yes.

18 JUDGE CHACHKIN: What is your basis for your
19 objection?

20 MR. JOYCE: I have to go through the entire thing
21 within my cross-examination to know whether or not we have
22 hearsay in here or any other basis for not admitting this
23 document. It's replete with hearsay statements.

24 JUDGE CHACHKIN: Normally if you want to -- before
25 you object, if you want to ask some qualifying questions, you

1 | could do so.

2 | MR. JOYCE: Your Honor, earlier this week you did
3 | not allow the FCC to, to move declarations into evidence.

4 | JUDGE CHACHKIN: That's not true. They didn't put
5 | in any direct testimony which -- they put in previous
6 | exhibits.

7 | MR. JOYCE: They were declarations of witnesses that
8 | they had on the stand.

9 | JUDGE CHACHKIN: Pardon me?

10 | MR. JOYCE: Declarations of witnesses --

11 | JUDGE CHACHKIN: I understood that the parties in
12 | this case could if they want put in direct cases. We just had
13 | a witness, Mr. Harrison. He put his direct case in writing
14 | rather than put it through orally. He -- and then he was
15 | asked questions on cross-examination. Are you saying that it
16 | wasn't permissible for, for Mr. Hardman to put in the
17 | testimony of witnesses in writing and direct examination?

18 | MS. LADEN: Your Honor, our objection -- I gather
19 | what he's going to do is do both, have written direct
20 | testimony and --

21 | JUDGE CHACHKIN: Well, I don't know what else he's
22 | going to ask him. Let's -- he says -- I don't know what
23 | questions.

24 | MS. LADEN: Well, Your Honor, we have objections to
25 | the exhibit. I wanted to make that clear. I guess if he's

1 offering it at this time we would like to -- I have objections
2 to specific --

3 JUDGE CHACHKIN: Fine. Let's hear your objections.

4 MS. LADEN: Okay. Your Honor, at page 3 --

5 JUDGE CHACHKIN: Yes.

6 MS. LADEN: -- the first and second paragraphs. The
7 first paragraph begins, "At the time" --

8 JUDGE CHACHKIN: Yes.

9 MS. LADEN: -- and the second paragraph ends, "Like
10 a part-22 channel." I have -- my objections are both that
11 it's irrelevant and that it's argumentative.

12 MR. HARDMAN: Your Honor, this witness, as the
13 written statement says, is the person responsible at Capitol
14 for initiating the private carrier paging service or handling
15 it from the -- to the licensing and all the way on through.
16 This -- and one of the issues in this proceeding was Capitol's
17 purpose in, in establishing its PCP service, whether it was to
18 interfere with RAM or not. It's in my opinion perfectly --
19 not only appropriate but called for for the competent party at
20 Capitol to explain what his thought process was in
21 establishing the service and what the -- what he thought the
22 significance of RAM actions were when they started attacking
23 Capitol, and that's all this does.

24 MS. LADEN: I think, Your Honor, paragraph 2 also
25 speculates as to RAM's purpose. I don't think this witness

1 can testify to RAM's purpose.

2 MR. HARDMAN: Your Honor, what paragraph 2 does is
3 recite Mr. Raymond's understanding or his belief as to what
4 Capitol --

5 JUDGE CHACHKIN: Ma'am, it's Capitol's state of
6 mind. It's not -- that's what it says. It does. What is
7 your objection now, to what? The first sentence?

8 MS. LADEN: The second paragraph speculates as to
9 the motive -- as to the reasons that RAM did or did not do
10 something.

11 JUDGE CHACHKIN: Well, haven't we had testimony from
12 RAM as to the motives of Capitol? You didn't object to that.
13 Isn't it permissible now for Capitol to testify as to motives
14 of RAM? I mean, if you're going to allow RAM to speculate as
15 to the motives, why do you object to this?

16 MS. LADEN: I don't, I don't believe that I heard
17 anyone speculate as to the reasons -- the purpose that Capitol
18 did something. People objected --

19 JUDGE CHACHKIN: You don't believe you heard RAM's
20 witnesses testifying as to what Capitol was -- what it was
21 doing?

22 MS. LADEN: What I heard was people speculating as
23 to what they believed was being done, but this doesn't say --

24 JUDGE CHACHKIN: Well, this believes what --
25 obviously it's his belief. I mean, if you let one in you

1 | might as well let the other in, too.

2 | MS. LADEN: He says RAM's purpose is obvious here.

3 | JUDGE CHACHKIN: Well, that's his belief.

4 | MR. JOYCE: I have a more fundamental question. I
5 | just don't understand why, prior to your ruling on admissions,
6 | why we wouldn't have the opportunity to cross-examine the
7 | witness. That's all.

8 | JUDGE CHACHKIN: I'm going to give you permission to
9 | cross-examine the witness and the entire document, but that
10 | has nothing to do with admissibility of the exhibit.

11 | MR. JOYCE: Well, if parts of it turn out to be
12 | hearsay and I --

13 | JUDGE CHACHKIN: Well, if you want to object on
14 | hearsay, just tell me what you're objecting to and I'll give
15 | you a ruling. Does the Bureau have further objections?

16 | MS. LADEN: Yes, Your Honor.

17 | JUDGE CHACHKIN: All right.

18 | MS. LADEN: At page 6 I have -- we have previously
19 | objected on the grounds of relevance, I think, in connection
20 | with the previous exhibit. In any event, the first paragraph
21 | under the section RAM's Attempts to Keep Capitol Off 152.48
22 | where it talks about NABER coordination. First of all, the
23 | NABER coordination matter is irrelevant but, in addition, his
24 | testimony about conversations he had with NABER coordinators
25 | is hearsay.

1 MR. HARDMAN: Your Honor, that is --

2 JUDGE CHACHKIN: I'm going to overrule the
3 objection.

4 MS. LADEN: At page 7 --

5 JUDGE CHACHKIN: Yes.

6 MS. LADEN: All right. Just a moment. I think that
7 in view of an earlier ruling that I'm -- on page 8, all of
8 that page in our opinion is irrelevant.

9 JUDGE CHACHKIN: All of page 8?

10 MS. LADEN: That's correct. And, in addition, the
11 second and third paragraphs, full paragraphs, are
12 argumentative.

13 JUDGE CHACHKIN: Do you have any response?

14 MR. HARDMAN: Yes, Your Honor. Again, Capitol is on
15 the dock here for its intentions in starting a PCP service and
16 -- in terms of the anti -- alleged anti-competitive use of
17 that, and all this does is explain the total -- and,
18 furthermore, the reasonableness of what it did in coordinating
19 is at issue. All this does is establish what the climate what
20 at the, at the time these actions were taken, what was going
21 on, and, and to describe Capitol's state of mind in responding
22 to the matters that it's now being -- excuse me, that it's now
23 being charged with. I don't know how else Capitol can defend
24 itself against these charges unless Mr. Raymond or another
25 competent party can tell the Commission what was going through

1 | its mind at the time, what was happening. I mean, that I
2 | thought was the purpose of the hearing.

3 | JUDGE CHACHKIN: Any further comments from the
4 | Bureau?

5 | MS. LADEN: No, Your Honor.

6 | JUDGE CHACHKIN: All right. I'll overrule --

7 | MR. JOYCE: Your Honor --

8 | JUDGE CHACHKIN: -- the objection. I understand
9 | that this is obviously self-serving. This is a statement made
10 | by Capitol and I assume they'll be cross-examined and there's
11 | apparently language which perhaps is not as objective as it
12 | should be but, taking that all into consideration, I think
13 | Capitol should have an opportunity to defend itself and, and
14 | I'm going to overrule the objection. Now, I'll assume they're
15 | going to be cross-examined about all these things. Anything
16 | else?

17 | MS. LADEN: Yes, Your Honor, at page 10.

18 | JUDGE CHACHKIN: But as far as relevance, I think it
19 | is relevant to the issues in this case. After all, the Bureau
20 | is -- part of the Bureau's case certainly -- the Bureau's case
21 | does not rest on the mere inspections done by, by the
22 | engineers.

23 | MS. LADEN: No, Your Honor.

24 | JUDGE CHACHKIN: The case rests to a great extent on
25 | what RAM's people have testified to and what RAM has asserted,

1 | under those circumstances certainly to test the credibility of
2 | RAM, whether RAM was credible or whether RAM had other
3 | purposes for its acts on Capitol are certainly relevant in
4 | determining the issues in this case, so I think it's
5 | appropriate to have in the record what took place before the
6 | Bureau set this matter for hearing. Now, if the Bureau was
7 | solely resting on its own inspectors, we'd have a different
8 | situation but since it isn't, since it's resting on RAM to a
9 | large extent, that the credibility and veracity and the
10 | actions of RAM are certainly appropriate to be considered.

11 | MR. HARDMAN: Thank you, Your Honor.

12 | MS. LADEN: Your Honor, at page 10, I understand
13 | your ruling. I had objections along those same lines, but I
14 | understand your ruling, but in the first full paragraph, the
15 | first paragraph under the section titled RAM's Initial
16 | Attempts to Run Capitol Off of 152.48 Megahertz, in that
17 | paragraph there's a statement that, "RAM started filing bogus
18 | complaints." I object to use of the term bogus. I believe
19 | that that is a conclusion.

20 | JUDGE CHACHKIN: Well, I will strike the word bogus.

21 | MR. JOYCE: Your Honor, I thought that we had
22 | determined that the word kick could be used, but run strikes
23 | me as being -- that's an objection I had earlier. "RAM's
24 | initial attempts to run Capitol off of 152.48," I would have
25 | the same objection.

1 JUDGE CHACHKIN: Well, how would you say -- like it
2 stated, Mr. Joyce? What words would you use?

3 MR. JOYCE: I don't think we'd established that RAM
4 made any such attempts whatsoever.

5 JUDGE CHACHKIN: Well, we'll -- I assume the witness
6 is here and you'll be able to cross-examine him.

7 MR. JOYCE: Well, it has not been established.

8 JUDGE CHACHKIN: You could suggest other language
9 besides to run Capitol off if you think of some other language
10 you think is --

11 MR. JOYCE: Well, to use Mr. Hardman's objection,
12 there's no foundation for this so the entire section should be
13 stricken.

14 MR. HARDMAN: The document speaks for itself and I
15 would submit that the, the caption or the subtitle, whatever
16 you want to call it, is amply supported by the matter that's
17 stated afterwards.

18 MR. JOYCE: There's no foundation for it at this
19 time certainly, Your Honor.

20 JUDGE CHACHKIN: Well, the witness will be cross-
21 examined. We'll see what happens. We do have the basis for
22 it and obviously to the extent that the succeeding paragraphs
23 support the conclusion, it does. To the extent it doesn't,
24 then obviously the caption will mean nothing. So your
25 objection is overruled. I have stricken the word bogus,

1 | however. The complaints, I agree that that's
2 | characterization.

3 | MR. JOYCE: On the previous page, Your Honor, page
4 | 9, I have a similar objection, first paragraph. "The FCC did
5 | see through RAM's ploy and rejected its protests." There's no
6 | record of evidence of the FCC ever saying such a thing. It's
7 | hearsay or it's a legal conclusion. I think it's improper.

8 | JUDGE CHACHKIN: Well, I'll strike the words, "did
9 | see through RAM's ploy," and the sentence will read, "The FCC
10 | rejected its protests."

11 | MR. JOYCE: In the second paragraph, "RAM also
12 | escalated its protests by recruiting a member of Congress to
13 | lobby the FCC on RAM's behalf." I don't, I don't see how
14 | we're going to be able to establish from this witness what RAM
15 | did. That's hearsay.

16 | MR. HARDMAN: No, Your Honor.

17 | JUDGE CHACHKIN: Well, isn't there a letter from the
18 | Congressman in the, in the record?

19 | MR. JOYCE: Not yet, sir.

20 | JUDGE CHACHKIN: Well, is the letter from the
21 | Congressman here somewhere?

22 | MR. HARDMAN: Yes. He's authenticating right now,
23 | Exhibit CAP 10, and I would also refer Your Honor to Exhibit
24 | CAP 18 which is -- we just had our discussion about and I
25 | would you to item number 8 which is on page -- item number 8

1 | which is a letter dated October 28, 1990 from Frederick M.
2 | Joyce, Joyce and Jacobs, to David Whalin, Office of
3 | Congressman Perkins, which was sent to NABER.

4 | JUDGE CHACHKIN: Well, in any event, the statements
5 | following the first sentence are set forth here and that's
6 | what it meant by escalating its protests by recruiting a
7 | member of Congress. We do have the letters.

8 | MR. HARDMAN: That, for the record, Your Honor, is
9 | page 20 of Exhibit CAP 18, is the letter I was referring to.

10 | JUDGE CHACHKIN: Yes. So if there is an objection
11 | to that, the objection's overruled. The letters will speak
12 | for themselves obviously. Any other objection?

13 | MS. LADEN: Your Honor, at page 12 --

14 | JUDGE CHACHKIN: Yes.

15 | MS. LADEN: -- the second paragraph --

16 | JUDGE CHACHKIN: Yes.

17 | MS. LADEN: -- makes a reference to CAP -- Capitol
18 | Exhibit 12.

19 | JUDGE CHACHKIN: Yes.

20 | MS. LADEN: We requested Mr. Basham for cross-
21 | examination who is the author of the declaration referred to.

22 | MR. HARDMAN: Your Honor, I thought we already had
23 | this discussion, that Exhibit CAP 12, that declaration is not
24 | offered for the truth of it.

25 | MS. LADEN: Then, Your Honor, I don't understand the

1 statement in the testimony then. I don't understand what it's
2 offered for.

3 MR. HARDMAN: He's authenticating the document
4 behind Tab 12 -- Exhibit CAP 12.

5 JUDGE CHACHKIN: Are you arguing that this
6 declaration is not relevant, Calvin Basham? Is that what
7 you're arguing?

8 MS. LADEN: That's right, Your Honor, and also that
9 we requested Mr. Basham for cross-examination and he is not
10 being produced.

11 MR. HARDMAN: Your Honor, the declaration referred
12 to is a component of a filing made by Capitol, you know,
13 which, you know, Mr. Raymond worked on and helped to produce
14 and the -- Exhibit CAP 12 which he is authenticating here is a
15 complete copy of the filing, and we had this discussion a
16 couple of days ago and Mr. Basham's document or, or whatever
17 is offered for completeness and not for the state of mind and
18 not for the truth of the, of the matters stated in the
19 declaration and, on that basis, the objection to the
20 declaration was overruled.

21 (TAPE 7)

22 MS. LADEN: Your Honor, I don't understand the
23 letter -- the statement, the sentence, in Mr. Raymond's
24 testimony. I don't understand what he is testifying to.

25 JUDGE CHACHKIN: He's authenticating the document

1 that was filed at the FCC for -- to lay the foundation to
2 introduce it into evidence as CAP 12.

3 MS. LADEN: Well, I have no objection to his
4 declaration -- his authenticating his own declaration, but I
5 would object to his authenticating Mr. Basham's declaration.

6 JUDGE CHACHKIN: It was part of the same filing.
7 Apparently this is material filed with the FCC by Capitol and
8 the letter from Basham was -- the declaration of Basham was
9 included with that material.

10 MS. LADEN: That's correct.

11 JUDGE CHACHKIN: And it's being offered to show this
12 is the material that was filed with the FCC, so we have here a
13 complete background of all the materials filed with the FCC
14 since the beginning of this controversy. It's not being
15 offered for the truth of what Mr. Basham said, so the
16 objection is overruled.

17 MS. LADEN: At page 14 --

18 JUDGE CHACHKIN: Yes.

19 MS. LADEN: -- at the very top.

20 JUDGE CHACHKIN: Yes.

21 MS. LADEN: -- the top paragraph, the sentence in
22 the middle that begins, "The thing I remember most," that
23 statement is hearsay. It's reporting what counsel reported to
24 Mr. Raymond, had been reported to him. It's double hearsay by
25 the FCC.

1 MR. HARDMAN: Your Honor, there was a meeting at the
2 FCC on April 2nd at which some very specific -- I would call
3 them threats were made by -- about what they were going to do
4 if these parties didn't go forward. I was the representative
5 on behalf of Capitol at that meeting and, as part of my
6 responsibilities, I had to relate what transpired to Mr.
7 Raymond for his edification and state of mind in terms of
8 making decisions. This is merely recording that transaction
9 for, for the record. Again, what it goes to show is Capitol's
10 state of mind after the April 2nd meeting which, in turn,
11 bears on the reasonableness of what it did under the
12 circumstances which it's being charged with.

13 MS. LADEN: Your Honor, Mr. Raymond did not attend
14 the meeting. I don't see how he can -- it's hearsay. I'm not
15 saying it's not relevant. I'm saying that it's hearsay. He's
16 testifying about what someone told him.

17 JUDGE CHACHKIN: It's being offered for state of
18 mind to what Mr. Hardman reported to him, his counsel reported
19 to him, and what actions were taken following that meeting
20 after -- to show his state of mind at the time -- at this
21 time. He was told by the Commission that if both of them
22 didn't cut this out then they both lost -- risked losing their
23 licenses. And this is what was imparted to Mr. Raymond and
24 that was Mr. Raymond's state of mind at this time. That's
25 what this purpose of -- yes? Any further -- that's overruled.

1 MS. LADEN: Yes, Your Honor. Page 16 --

2 JUDGE CHACHKIN: Yes.

3 MS. LADEN: -- there's a section of -- in the
4 testimony that's entitled Link Frequency Problems. I'm not
5 sure what the relevance is of this testimony.

6 JUDGE CHACHKIN: Well, I thought there had been
7 considerable testimony concerning the link, hasn't it, in this
8 proceeding?

9 MS. LADEN: There has been, Your Honor. I just
10 wanted to know whether this was being offered as part of that
11 testimony about the testing. It's not clear to me.

12 MR. HARDMAN: Yes. It is related primarily to the
13 testing because it gives the chronology of the system changes
14 that Capitol had to go through as part of their overall
15 process during the period of time that the alleged
16 interference was occurring.

17 JUDGE CHACHKIN: All right. Anything -- you object
18 to that?

19 MS. LADEN: No, no.

20 JUDGE CHACHKIN: All right.

21 MS. LADEN: With that explanation. At page 28,
22 Your Honor --

23 JUDGE CHACHKIN: Yes.

24 MS. LADEN: -- beginning at -- with the first full
25 paragraph, "As far as the allegations of lack of candor are

1 concerned," this is argument that I think would be appropriate
2 for proposed findings, but I don't think it's appropriate
3 here. It's disagreeing with the Hearing Designation Order.

4 JUDGE CHACHKIN: Well, isn't it the Hearing
5 Designation Order they charged certain things and this is an
6 attempt to show that the Designation Order was in error?

7 MS. LADEN: But, but this is not factual. He's not
8 testifying as to any facts as to why it's in error. This is
9 argument which, as I said, Capitol can made in their proposed
10 findings. They certainly have a right to make them.

11 JUDGE CHACHKIN: Well, how are they going to make in
12 their proposed findings unless they testify to it?

13 MS. LADEN: But, Your Honor, they can't testify that
14 the Hearing Designation Order is wrong. That's my point.
15 They can argue that it's wrong, but this witness cannot
16 testify as a factual matter that it's wrong.

17 JUDGE CHACHKIN: Well, he's trying to show them what
18 matter is wrong. A claim is made in the Hearing Designation
19 Order concerning Capitol's subscriber billing date and they
20 say that claim is in error and they try to point out why the
21 error -- the claim is in error. Now, if they don't set the
22 foundation by saying where these charges were made, I don't
23 understand what improper about that. Are you saying that they
24 don't present the, the Designation Order correctly?

25 MS. LADEN: No, no.

1 JUDGE CHACHKIN: This is not what the Designation
2 -- well, they point out this is the charge in the Designation
3 Order and this is our response.

4 MS. LADEN: But it's not they who are pointing it
5 out, Your Honor. This witness is testifying to this and this
6 is --

7 JUDGE CHACHKIN: That's right. Who is going to
8 testify to it but this witness?

9 MS. LADEN: But this is not a fact about which he
10 --

11 JUDGE CHACHKIN: That he what? He doesn't have
12 knowledge?

13 MS. LADEN: -- that he can testify. This is proper
14 argument for his proposed findings.

15 JUDGE CHACHKIN: Well, you can cross-examine. I'm
16 going to overrule the objection.

17 MS. LADEN: Similarly, Your Honor, at the top of
18 page 29 is the same, "And the other allegations of lack of
19 candor are equally without substance." I think that that
20 statement is for Your Honor to determine.

21 JUDGE CHACHKIN: Yes, but this is his belief and
22 this is his testimony why it's without substance and that
23 cross-examination -- based on the cross-examination and the
24 testimony of other witnesses, I'll draw a conclusion, but this
25 is his testimony as to why it's without substance. You

1 | certainly can question him about it.

2 | MS. LADEN: And I have the same objection at the end
3 | of that paragraph. "It was the FCC that jumped to erroneous
4 | conclusions about Capitol's system." I think that's
5 | argumentative, as well as calling for a legal conclusion.

6 | MR. HARDMAN: It may be somewhat argumentative, but
7 | it certainly is conviction.

8 | JUDGE CHACHKIN: Well, I'll strike the thought, "It
9 | was the FCC that jumped to erroneous conclusions about
10 | Capitol's system," and leave in the sentence -- so the
11 | sentence will read, "What truthful concern the FCC use and
12 | operation -- inhibitor used by Capitol as part of the FCC
13 | period," and then the next sentence reads, "Capitol's PCP
14 | venture at all times was a legitimate business endeavor with
15 | no hidden agenda."

16 | MS. LADEN: And that's -- I have no objection to it
17 | that way.

18 | JUDGE CHACHKIN: All right.

19 | MS. LADEN: And the next sentence, Your Honor,
20 | "Issuance of the Hearing Order was extremely unfair and -- to
21 | Capitol." I don't see how that's relevant and I also think
22 | it's argumentative.

23 | MR. HARDMAN: Well, that is certainly Capitol's
24 | analysis of the impact of the Hearing Order and the whole
25 | process.

1 MS. LADEN: Well, I don't see how --

2 JUDGE CHACHKIN: Well, I'll strike the first
3 sentence as conclusory and argumentative and I'll leave in the
4 last two sentences. Any further objection?

5 MS. LADEN: No, Your Honor.

6 JUDGE CHACHKIN: Mr. Joyce, you have some
7 objections, as well?

8 MR. JOYCE: Yes, Your Honor.

9 JUDGE CHACHKIN: Well, we'll take a ten minute
10 break. Then you can give your objections.

11 (Whereupon, a brief recess was taken from 3:10 p.m.
12 until 3:24 p.m.)

13 JUDGE CHACHKIN: Let's go back on the record.

14 MR. JOYCE: Oh, I'm sorry. I thought you asked if I
15 had the same objections, Your Honor.

16 JUDGE CHACHKIN: No.

17 MR. JOYCE: I have no --

18 JUDGE CHACHKIN: Oh, you have no further objections?

19 MR. JOYCE: No. I'm sorry.

20 JUDGE CHACHKIN: All right.

21 MR. JOYCE: I apologize.

22 JUDGE CHACHKIN: All right. Then I will receive
23 except as noted -- Capitol Exhibit 1 will be received.

24 (The document previously marked for
25 identification as CAP Exhibit No. 1

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1 was received into evidence.)

2 MR. HARDMAN: All right. We also offer Exhibits 3
3 through 17 at this time. These are documents authenticated in
4 the text of Exhibit 1.

5 JUDGE CHACHKIN: 2 is a Petition to Deny a request
6 of an application and this is being offered, I assume, for the
7 purpose of showing what was filed with the Commission?

8 MR. HARDMAN: That's right, Your Honor.

9 JUDGE CHACHKIN: Any objection to that?

10 MS. LADEN: Your Honor, if it's for that purpose, no
11 objection.

12 JUDGE CHACHKIN: All right. Capitol Exhibit 2 is
13 received.

14 (The document previously marked for
15 identification as CAP Exhibit No. 2
16 was received into evidence.)

17 JUDGE CHACHKIN: Capitol Exhibit 3 is a Motion for
18 Stay of Application. I assume it was filed for the similar
19 purpose?

20 MR. HARDMAN: That's right, Your Honor.

21 JUDGE CHACHKIN: Any objection for that purpose?
22 Capitol Exhibit 3 is received.

23 (The document previously marked for
24 identification as CAP Exhibit No. 3
25 was received into evidence.)